

## **ORAL ARGUMENT PROCEDURES**

### **REQUESTS FOR ORAL ARGUMENT/MOTIONS FOR SUBMISSION ON THE BRIEFS:**

Because any case may be decided without oral argument, all major arguments should be fully developed in the briefs. Parties may include in their briefs at the conclusion of the argument a statement setting forth the reasons why, in their opinion, oral argument should be heard. Motions to submit on the briefs should be filed as soon as possible upon completion of the briefing schedule or within ten calendar days of tentative notification of oral argument, whichever is earlier. Local Rule 34(a), (e).

**TENTATIVE NOTIFICATION OF ORAL ARGUMENT:** Counsel are notified approximately two months in advance that their case has been tentatively scheduled for oral argument for a particular week. Within ten calendar days of receiving the tentative calendar notice, counsel must notify the clerk of any conflict and file any motion that would affect the calendaring of the case for argument, such as a motion for continuance or for submission on the briefs. Cases which are not continued or submitted on the briefs are either assigned a date certain for oral argument or placed on standby for the upcoming argument session. Local Rule 34(c).

**STANDBY NOTIFICATION:** If a case is placed on standby, counsel receives notice that the case has been assigned to standby status and may be assigned for argument up until the Wednesday before the court session.

**NOTIFICATION OF ORAL ARGUMENT:** Counsel are notified approximately one month in advance that their case has been scheduled for argument for a date certain. Once a case has been scheduled for argument, it will be removed from the argument calendar only for extreme unforeseeable problems. Although a case will not be removed from the calendar because of a scheduling conflict after the notification of oral argument has been issued, the court may direct another lawyer from the same firm to argue the appeal if counsel of record cannot be present. Local Rule 34(c).

**NOTIFICATION OF APPEARANCE:** Counsel of record for parties in the case must inform the court regarding who will appear for argument by returning the acknowledgment attached to the oral argument notification within five days of receipt. It is recommended that no more than two attorneys argue per side. In criminal cases, an attorney must appear on behalf of each defendant separately represented unless the defendant signs a waiver of counsel's appearance and codefendant's counsel certifies in advance of argument that he is prepared to argue on behalf of the defendant whose attorney is not present.

**REGISTRATION FOR ARGUMENT:** Counsel must register for oral argument in Room 226 in the Richmond Courthouse between 8:45 and 9:00 a.m. for arguments beginning at 9:30 a.m. and between 7:45 and 8:00 a.m. for arguments beginning at 8:30 a.m. (generally on the last day of the Court session). Only attorneys admitted to practice before the court may present argument. Counsel not yet admitted to the Fourth Circuit may complete an application form, pay the \$40 admission fee, and complete a counsel of record form at registration. All counsel arguing on a side must check in together and notify the court of the order in which they will argue and how the allotted time will be divided among them. Court begins promptly at 9:30 a.m. (8:30 a.m. on the last day of the session). Local Rule 34(c).

**ALLOCATION OF ARGUMENT TIME:** All parties to a side must share the time allotted for oral argument. In black lung cases in which the Director, Office of Workers' Compensation Programs, has been granted leave to file a separate brief, the Director will share argument time with whichever side the Director's brief supports.

Each side is normally allowed 20 minutes, even in consolidated cases, but counsel may not need the full time allotted or the court may shorten or extend the time allotted. In social security disability cases, black lung cases, and labor cases where the primary issue is whether the agency's decision is supported by substantial evidence and in criminal cases where the primary issue involved the application of the sentencing guidelines, each side is limited to 15 minutes.

If counsel believe that more time is needed for oral argument or that all parties to a side should not be required to share argument time, a written motion setting forth the reasons for additional time and whether the other parties consent must be submitted well in advance of the hearing date. The court may sua sponte extend the allotted time during the argument or it may terminate the argument whenever in its judgment further argument is unnecessary.

Counsel notify the court when registering for argument whether they wish to use the full time available or a lesser amount of time. Counsel for appellants and cross-appellants may reserve up to one-third of their total time for rebuttal, and must state at the time of registration how much time is reserved for rebuttal. Time designated for opening argument but not used at opening cannot be added to the reserved rebuttal time. Local Rule 34(d).

**PARTICIPATION BY INTERVENORS AND AMICUS:** Intervenors are treated as parties for purposes of both briefing and argument, and share argument time with whichever side they support. Amicus do not participate in argument except upon permission of the court. A motion by amicus to participate in argument should be filed immediately after notification of oral argument and state the position of the parties on the motion. If such a motion is granted, amicus is typically permitted to argue on time ceded by the party whose position they support. Fed. R. App. P. 29.

**EXHIBITS:** If physical exhibits other than documents are to be used at argument, counsel must make advance arrangements with the clerks of the district court and court of appeals for their transportation and receipt. Such arrangements are best made after receipt of notice of oral argument. Counsel should make arrangements to have them placed in the courtroom before court convenes on the date of argument. After argument, counsel shall cause the exhibits to be removed from the courtroom unless the court otherwise directs. If the exhibit is not a matter of record, counsel must seek leave of court to present the exhibit at argument. The motion should reflect whether opposing counsel consents to or will oppose the request. Fed. R. App. P. 34(g); Local Rule 11(c).

**ARGUMENT PANEL:** The composition of each panel usually changes daily, and the identity of the argument panel is kept confidential until the morning of oral argument.

The Chief Judge presides over en banc sessions of the court and over all three-judge panels on which he sits. The active circuit judge most senior in service on a panel is the presiding judge for all other oral argument panels. The presiding judge sits in the center of the panel; the next most senior judge sits to the right of the presiding judge; and the least senior judge on the panel sits to the left of the presiding judge.

An appeal may be heard and decided by two of the three judges assigned to a panel, when one judge becomes unavailable. If a panel is reduced to two and the two cannot agree, however, the case will be reargued before a new three-judge panel which may or may not include prior panel members. Internal Operating Procedure 34.1, 36.2.

**ARGUMENT PROTOCOL:** Counsel may sit at either counsel table, and counsel for the first case should be seated at counsel table when court convenes. Clients do not sit at counsel table.

A three-light (green, yellow, and red) timing system is used to monitor each attorney's argument time. The green signal comes on when argument begins. When five minutes remain of argument time, the green signal goes off and the yellow signal comes on. The red signal comes on when the attorney's time is ended.

The panel will have read the briefs before the hearing and therefore will be familiar with the case. In oral argument, counsel should emphasize the dispositive issues. Local Rule 34(d).

Traditionally, Fourth Circuit judges come down from the bench following argument to shake hands with counsel and thank them for their advocacy.